

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

ALBERT BROOKE,

Plaintiff

v.

MS. STEVENS, ET AL.,

Defendants

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CIVIL NO. 4:CV-07-2329

(Judge McClure)

**MEMORANDUM**

January 7, 2008

**Background**

Albert Brooke (“Plaintiff”), an inmate presently confined in the State Correctional Institution, Coal Township, Pennsylvania (“SCI-Coal Twp.”), initiated this *pro se* civil rights action. Named as Defendants are the following SCI-Coal Twp. officials: Mental Health Director J. Stickler and Counselors Stevens and Adams. See Record document no. 1, ¶ III. The complaint is accompanied by a request for leave to proceed *in forma pauperis*. For the reasons set forth below, Brooke’s complaint will be dismissed, without prejudice pursuant to the screening provisions of 28 U.S.C. § 1915(g).

Brooke alleges that the Defendants violated his due process, equal protection, and access to the courts rights by threatening to have him removed from

group counseling unless he discussed his case. Id. at ¶ IV(1). Plaintiff notes that he did not wish to discuss the aspects of his criminal case during institutional counseling sessions because it was still pending in court. His Complaint adds that the Defendants' purported conduct was contrary to the terms of his plea agreement and prevented him from obtaining rehabilitation and favorable parole consideration. As relief, Brooke seeks monetary damages.

### **Discussion**

Under § 1915(g), a federal civil action by a prisoner proceeding in forma pauperis is barred if he or she:

has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Brooke, while incarcerated, previously initiated the following civil actions which were dismissed by this Court under 28 U.S.C. § 1915 as being frivolous:

Brooke v. Luzerne County Prison, et. al., Civil No. 4:94-CV-1024 (M.D. Pa. July 26, 1994)(complaint *sua sponte* dismissed as frivolous); Brooke v. Bott, Civil No. 4:94-CV-453 (M.D. Pa. April 25, 1994)(*sua sponte* dismissal on grounds that complaint is frivolous); Brooke v. Carbon County Children & Youth, et al., Civil No. 4:94-CV-1203 (M.D. Pa. Aug. 15, 1994)(complaint *sua sponte* dismissed as frivolous); Brooke v. Urbanski, Civil No. 4:94-1205, (M.D. Pa. Aug. 15, 1994)(*sua sponte* dismissal on the basis of frivolousness).

The gist of Plaintiff's present complaint is his contention that the purported conduct of the Defendants interfered with his ability to participate in group counseling and obtain favorable parole consideration. The alleged unconstitutional conduct does not place this inmate in danger of imminent "serious physical injury" at the time his complaint was filed on December 21, 2007. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001), cert. denied, 533 U.S. 953 (2001). Pursuant to the standards announced in §1915(g), Brooke's present civil rights action is barred under § 1915(g). An appropriate Order will enter.<sup>1</sup>

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s/ James F. McClure, Jr.  
JAMES F. McCLURE, JR.  
United States District Judge

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1. It is also noted that inmates may not use civil rights actions to challenge the fact or duration of their confinement or to seek earlier or speedier release. Preiser v. Rodriguez, 411 U.S. 475 (1975). As noted above, Brooke indicates that he is being subjected to an unconstitutional denial of parole. Thus, his present complaint is in part attacking the length of his ongoing state confinement, an assertion which is not properly raised in a civil rights complaint. See Edwards v. Balisok, 520 U.S. 641, 646 (1997).

Moreover, Brooke's request for damages based upon the alleged improper denial of parole is premature because he cannot maintain a cause of action until the basis for the parole denial has been rendered invalid. See Heck v. Humphrey, 512 U.S. 477 (1994).

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(Judge McClure)

**ORDER**

January 7, 2008

In accordance with the accompanying Memorandum,

**IT IS HEREBY ORDERED THAT:**

1. The Plaintiff's complaint is dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).
2. The Clerk of Court is directed to close the case.
3. Any appeal from this Order will be deemed frivolous, without probable cause and not taken in good faith.

s/ James F. McClure, Jr.  
JAMES F. McCLURE, JR.  
United States District Judge